



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

L. Preston Bryant, Jr.  
Secretary of Natural Resources

NORTHERN VIRGINIA REGIONAL OFFICE  
13901 Crown Court, Woodbridge, Virginia 22193  
(703) 583-3800 Fax (703) 583-3801  
[www.deq.virginia.gov](http://www.deq.virginia.gov)

David K. Paylor  
Director

Jeffery A. Steers  
Regional Director

## STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO

**Shirlington Overlook  
DEQ Registration No. 70594**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 10.1-1316.C, 10.1-1307.D and 10.1-1309, between the State Air Pollution Control Board (SAPCB) and Shirlington Overlook, for the purpose of resolving certain alleged violations of the SAPCB regulations as specified in SECTION C of this Order.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.

5. "Order" means this document, also known as a Consent Order.
6. "Shirlington Overlook" means the facility located at 4155 South Four Mile Run Drive, Arlington, Virginia 22204.
7. "NVRO" means the Northern Virginia Regional Office of DEQ, located in Woodbridge, Virginia.
8. "Regulations" refers to the Regulations for the Control and Abatement of Air Pollution for the Commonwealth of Virginia.
9. "VAC" means Virginia Administrative Code.

**SECTION C: Findings of Fact**

1. Shirlington Overlook has two Cleaver Brooks boilers with a rated capacity of 14.6MMBTU/hr, making it subject to State Air Pollution Control Board regulations.
2. 9 VAC 5-20-160 of the regulations requires that, upon request of the board, the facility shall register such source operations with the board and update such registration information. The information required for registration shall be determined by the board and shall be provided in the manner specified by the board. The board has determined that sources shall periodically be required to submit data in order to calculate emissions from its operations. The format for reporting the data is the Annual Update form, which is requested of all Air facilities on a minimum tri-annual basis. The board requested that Shirlington Overlook complete and submit Annual Updates for Calendar Year 2002 and Calendar Year 2005.
3. During a 2004 review of DEQ's compliance files, it was noted that the source had not submitted the Calendar Year 2002 Annual Update.
4. A January 20, 2005, inspection of the Shirlington Overlook facility was conducted in response to the facility's apparent failure to submit the Calendar Year 2002 throughput data. A copy of the Annual Update form was left at the facility to be completed and submitted to DEQ in order to return the facility to "in compliance" status.

5. DEQ issued an Informal Correction Letter (ICL), dated January 26, 2005, noting Shirlington Overlook's Calendar Year 2002 reporting deficiency and requesting written response within 30 days. To date, no response has been received by the DEQ.
6. DEQ issued a Warning Letter (WL), dated October 25, 2005, addressing Shirlington Overlook's failure to respond to the ICL and failure to submit the Annual Update for Calendar Year 2002. To date, no response has been received by the DEQ.
7. In April 2006, DEQ sent a copy of the Calendar Year 2005 Annual Update to Shirlington Overlook, with instructions to complete and submit the form within 30 days. To date, no response has been received by the DEQ.
8. DEQ issued a Notice of Violation (NOV), dated May 15, 2006, addressing Shirlington Overlook's failure to respond to the ICL, the WL, and multiple telephone requests to submit the Annual Update for Calendar Year 2002 and Calendar Year 2005. The referenced NOV stated that the facility must respond within ten days to discuss the matter and arrange a meeting. To date, no response has been received by the DEQ.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §10.1-1316(C), the Board orders Shirlington Overlook, and Shirlington Overlook agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Shirlington Overlook, and Shirlington Overlook voluntarily agrees, to pay a civil charge in the amount of Thirteen Thousand Three Hundred Thirty Five dollars (\$13,335.00). The civil charge is due within 30 days of the effective date of the Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control  
Department of Environmental Quality  
P.O. Box 10150  
Richmond, Virginia 23240

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Shirlington Overlook, for good cause shown by Shirlington Overlook, or on its own motion after notice and opportunity to be heard.

2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to the Shirlington Overlook facility by DEQ on May 15, 2006. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Shirlington Overlook admits the jurisdictional allegations, factual findings, and conclusions contained herein.
4. Shirlington Overlook consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Shirlington Overlook declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 9-6.14:1 *et seq.*, and the State Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Shirlington Overlook to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.



8. Shirlington Overlook shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Shirlington Overlook shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Shirlington Overlook shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result or has resulted in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

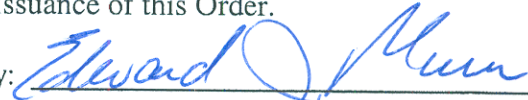
9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Shirlington Overlook. Notwithstanding the foregoing, Shirlington Overlook agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Shirlington Overlook. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Shirlington Overlook from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, Shirlington Overlook voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of 27<sup>th</sup> October, 2006.

  
Jeffery A. Steers, NVRO Regional Director  
Department of Environmental Quality

Shirlington Overlook voluntarily agrees to the issuance of this Order.


By:   
Date: 10/23/06

Commonwealth of Virginia

City/County of Fairfax

The foregoing document was signed and acknowledged before me this 23<sup>rd</sup> day of October, 2006, by Edward J. Murn, who is  
(Month) (Name)

Vice President for the Shirlington Overlook facility, on behalf of the facility.  
(Title)

  
Notary Public

My commission expires: 9/30/09



## **APPENDIX A**

As part of the resolution of this Consent order, Shirlington Overlook facility shall perform the following actions:

1. Complete and submit Annual Updates for Calendar Years 2002 and 2005 by September 29, 2006.
2. Provide a written accounting of the corrective actions it will take to ensure future compliance with the regulations and to appropriately respond to the board's request for information.